

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 61574-2-I
Respondent,)	
)	
v.)	DIVISION ONE
)	
FREDERICK M. PIGOTT,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: May 26, 2009

PER CURIAM. Frederick Pigott appeals the sentence imposed following his guilty plea to two counts of felony violation of a court order. He contends, and the State agrees, that the combination of 60 months confinement and 9 to 18 months of community custody exceeds the 60-month maximum sentence for his offense.¹ The parties disagree, however on the appropriate remedy. Pigott contends we should remand for resentencing and reconsideration of “the proper balance between incarceration and community custody.” The State contends we should remand only for the court to clarify that Pigott’s total sentence may not exceed the statutory maximum.

We recently held in State v. Linderud, 147 Wn. App. 944, 197 P.3d 1224 (2008) that when the combination of confinement and community custody exceeds the maximum sentence, the sentence is indeterminate and must be remanded for imposition of a determinate sentence not exceeding the statutory maximum. This is true even if the judgment and sentence recites that the total sentence shall not exceed the statutory maximum. Linderud, 147 Wn. App. at 949-51. Accordingly, we must

¹ Pigott has filed a pro se statement of additional grounds for review in which he challenges his sentence on similar grounds.

remand for resentencing and for the court to exercise its discretion regarding the terms of confinement and community custody. Linerud, 147 Wn. App. at 951. We note that “[i]f the trial court wants to impose the maximum terms of confinement and community custody, it may do so under the second option in RCW 9.94A.715(1), which permits it to impose a term of community custody equal to the earned early release time.” Order Den. Mot. for Recons. And Amending Op. at 1, Linerud, No. 60769-3-I (Wash. Ct. App. Mar. 20, 2009), amendment to be published at Linerud, 147 Wn. App. at 950 n.17.

Remanded for resentencing.

For the court:

Jain, J.
Dwyer, A.C.J.
Grosse, J.